STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

        Plaintiff-Appellee,

v

CHRISTOPHER ALAN JAY,

        Defendant-Appellant.

UNPUBLISHED
June 22, 2010

No. 290129
Emmet Circuit Court
LC No. 08-002984-FH

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right his conviction, following a jury trial, of three counts of resisting and obstructing arrest, MCL 750.81d(1), and one count of being a disorderly person, MCL 750.167(1)(e). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to serve concurrent two to 15 years' imprisonment, with credit for 46 days served, for the resisting arrest convictions. Defendant was sentenced to serve 46 days in jail for his disorderly person conviction, with credit for 46 days served. We affirm.

Defendant argues that his conviction for resisting arrest should be vacated because his warrantless arrest was not lawful under MCL 764.15. The linchpin of this argument is that this Court wrongly decided in *People v Ventura*, 262 Mich App 370, 377; 686 NW2d 748 (2004) that "a person may not use force to resist an arrest made by one he knows or has reason to know is performing his duties regardless of whether the arrest is illegal under the circumstances of the occasion." We disagree with this assertion given, as *Ventura* recognized, the clear language of the statute. Therefore, defendant did not have a right to resist his arrest if he knew or had reason to know that the officers were performing their duties.[1]

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[1] Defendant also contends that police did not have the authority to arrest him, without a warrant, for this misdemeanor. A warrantless arrest may occur if a police officer has reasonable cause to believe that a felony or misdemeanor has been committed and that the defendant was the person who committed it. MCL 764.15(d). In this case, the complainant reported that defendant's behavior escalated on three occasions, and on the last occasion, defendant pounded on his door and threatened to kill the complainant with a knife. After the first incident, defendant admitted to having contact with the complainant. In light of this escalation in activity and admissions, the police were entitled to arrest defendant without a warrant, and the type of charge to issue rests

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The evidence established that defendant knew or should have known that the officers were performing their duties. Two state police troopers spoke with defendant on two separate occasions on the night of the incident. A public safety officer was also present on the second occasion, because the state troopers were concerned about defendant's potential aggressive behavior. The first time the state troopers spoke with defendant, they informed him they were there in response to a 911 call. One officer told defendant that he would be arrested if he continued to bother a neighbor in his apartment building. The second time the officers spoke with defendant, they told him they had "no other choice" but to arrest him. Defendant testified that the three officers did not tell him he was under arrest, but rather stated, "[y]ou are going with us," to which he responded, "[n]o, I'm not." However, he also explained that he understood this to mean that he was under arrest. Under these circumstances, defendant's challenge to his conviction for resisting and obstructing arrest is without merit. *Ventura*, 262 Mich App at 377.

We also reject defendant's unpreserved challenges to the conduct of the trial prosecutor and defense counsel. The cited testimony elicited by the prosecutor was not admitted for the truth of the matter asserted, and is therefore not hearsay by definition. MRE 801(c). Defense counsel cannot be deemed ineffective for failing to raise a pointless hearsay objection. *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991).

Affirmed.

/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens

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solely within the prosecutor's discretion. *People v Morey*, 461 Mich 325, 335 n 6; 603 NW2d 250 (1999).